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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JUI-CHIEN LIN,

Plaintiff and Appellant,

v.

ROBERT T. CHIU,

Defendant and Appellant.

B285053

(Los Angeles County  
Super. Ct. No. KC066675)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dan T. Oki, Judge. Affirmed.

Law Office of Dan Hogue and Dan Hogue, for Plaintiff and Appellant.

Maxwell E. Lin & Associates and Maxwell Lin for Plaintiff and Appellant.

BarthCalderon, LLP and David R. Calderon for Defendant and Appellant.

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An investor signed a contract agreeing to contribute \$1 million toward opening a fast food restaurant franchise, and was promised full repayment plus \$80,000 by the end of five years. The franchisees accepted the money but did not fully repay it. The investor sued to recover the shortfall, and the trial court ruled in his favor. On appeal, one of the franchisees argues that the contract was illegal (and hence unenforceable) because the investor later went on to use the contract to apply for lawful permanent residency in the United States as an “alien entrepreneur” when the contract did not meet the prerequisites for that program. On cross-appeal, the investor argues that the trial court should have invalidated the franchisee’s post-default transfer of assets as a fraudulent transfer. Neither the appeal nor cross-appeal has merit, so we affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **I. Facts**

In September 2004, plaintiff Jui-Chien Lin (Lin) entered into an “Agreement to Form A California Limited Liability Company [(LLC)]” (Agreement) with Robert Chiu (Chiu) and Charles Cobb (Cobb). Pursuant to that Agreement, Chiu and Cobb agreed to form an LLC to acquire and operate a fast food restaurant in California. Lin agreed to contribute \$1 million for five years in exchange for becoming a 30 percent owner in the LLC. The Agreement obligated Chiu and Cobb to “buy back” the \$1 million contribution from Lin “[a]t the end of the five year[] term” and to pay Lin an additional \$80,000—\$40,000 by the end of the fourth year, and another \$40,000 by the end of the fifth. Otherwise, Chiu and Cobb were to retain all of the “revenues derived” from the LLC’s restaurant and to indemnify and hold Lin harmless from any of the LLC’s debts and other losses. After

signing the contract, Chiu formed the Golden Restaurant, LLC (LLC) and Lin wired \$1,000,130 to the LLC.

Lin had sought out and signed the Agreement because he wanted to qualify as an “alien entrepreneur” under federal immigration law. Federal immigration law authorizes a foreign investor to apply for permanent residency in the United States if he has (1) invested “capital” of, in most geographic areas, at least \$1 million (2) “in a new commercial enterprise” (3) “that creates” “not fewer than 10” jobs for persons lawfully in the United States. (U.S. Citizenship and Immig. Services, Policy Mem., (May 30, 2013) p. 2); 8 U.S.C. § 1153(b)(5); 8 C.F.R. §§ 100.1, 204.6.) Lin told Chiu and Cobb about his desire to seek alien entrepreneur status. Indeed, “facilitating” Lin’s “interest in obtaining U.S. permanent residency” was listed as the second “purpose” of the Agreement; the first was to “form a California [LLC] . . . [to] construct[] and operat[e] [a] [r]estaurant.” Lin applied for permanent residency seven months after signing the Agreement, and his application was thereafter granted.

Chiu and Cobb were unable to pay Lin either of the \$40,000 payments or to buy back the \$1 million contribution at the end of the five-year period. Lin waived his entitlement to the \$80,000 payments and granted Chiu additional time to repay the contribution. Between March 2011 and November 2012, Chiu eventually made payments totaling \$298,000 to Lin. This left a balance of \$702,000 unpaid.

In May 2011, Chiu and his wife transferred their respective 50 percent interests in the family home into separate qualified personal residence trusts (the trusts).

## II. Procedural Background

In 2014, Lin sued Chiu, Cobb, the LLC, Chiu's wife and the trusts. In the operative, Second Amended Complaint, Lin sued (1) Chiu for breach of contract (and, in particular, the Agreement's buyback provision)<sup>1</sup> and (2) Chiu, Chiu's wife and the trusts for transferring their home into the trusts, in violation of the Uniform Voidable Transactions Act (Civ. Code, § 3439 et seq.).<sup>2</sup>

Chiu moved for summary judgment on the ground that the Agreement was illegal (and hence unenforceable). More specifically, Chiu argued that Lin's "contribution" under the Agreement was simply a loan and that loans do not qualify as "investments" under the alien entrepreneur provisions (*In re Izummi*, 22 I. & N. Dec. 169 (BIA 1998); 8 C.F.R. § 204.6(e)), such that the Agreement violated federal immigration law. The trial court rejected the argument and denied the motion.

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<sup>1</sup> Lin also sued Cobb, but later dismissed him after Cobb declared bankruptcy.

<sup>2</sup> The SAC alleged ten other claims, including for (1) breach of the LLC's operating agreement, (2) fraud and misrepresentation, (3) negligent misrepresentation, (4) breach of fiduciary duty, (5) conspiracy, (6) rescission of the Agreement, (7) rescission of the LLC's operating agreement, (8) an accounting, (9) unjust enrichment, and (10) declaratory relief. Lin voluntarily dismissed three of these claims. The trial court ruled against him on the remainder, and neither Lin nor Chiu appeals those rulings.

All further statutory references are to the Civil Code unless otherwise indicated.

The matter proceeded to a bench trial. At trial, Chiu testified and conceded that he owed Lin the outstanding balance of \$702,000 if the Agreement was valid. Lin and Chiu each called experts on immigration law who offered differing opinions on whether Lin's contribution of \$1 million under the Agreement would qualify as an "investment" under the alien entrepreneur rules. Chiu's expert also opined that Lin's failure to include the Agreement with his application for lawful permanent residency constituted document fraud.

The court ruled that Chiu had breached the Agreement by not repaying the \$702,000 still owing. The court rejected Chiu's argument that the Agreement was illegal. The court found that the Agreement had two stated purposes—(1) to have Chiu and Cobb "benefit" from Lin's \$1 million investment into the LLC, and (2) "to qualify . . . Lin and his family" as alien entrepreneurs. To the court, neither of those purposes was illegal. Even if Lin's alien entrepreneur petition should have been denied because the Agreement amounted to a loan and not an investment, the court continued, that fact "does not equate in mak[ing] the [Agreement] and [underlying loan] transaction unlawful."

The court ruled that Chiu and his wife had not fraudulently conveyed their home to the trusts. More specifically, the court ruled that Lin had not "met his burden of proof" in showing that "the transfer rendered [Chiu or his wife] insolvent."

After the court entered judgment, Chiu filed a timely notice of appeal and Lin filed a timely notice of cross-appeal.

### **DISCUSSION**

On appeal, Chiu argues that the trial court erred in ruling that he breached the Agreement (because the Agreement was unenforceable and because Lin had "unclean hands"). On cross-

appeal, Lin argues that the trial court erred in ruling that he had not proven Chiu's insolvency (because the court mis-assigned the burden of proof). We independently review issues of illegality, the applicability of the unclean hands doctrine to a particular situation, and the proper assignment of the burden of proof. (*Kashani v. Tsann Kuen China Enterprise Co.*, (2004) 118 Cal.App.4th 531, 540 [illegality]; *Brown v. Grimes* (2011) 192 Cal.App.4th 265, 274 [unclean hands]; *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888 [questions of law, such as mis-assignment of burden of proof].) We review any factual findings for substantial evidence. (*Steiner v. Thexton* (2010) 48 Cal.4th 411, 417, fn. 7.)

## **I. Appeal of Breach of Contract Ruling**

Chiu contends that the Agreement is unenforceable on two interrelated but distinct theories—namely, that (1) the Agreement itself is illegal, and (2) Lin has unclean hands. In invoking each theory, Chiu more specifically asserts that (1) the Agreement has an illegal purpose, and (2) Lin used the Agreement to commit a fraud upon the immigration authorities by not disclosing the full Agreement when applying for alien entrepreneur status (in order to conceal that the Agreement really only provided for a loan, and not an investment).

### **A. Is the Agreement itself unenforceable?**

A contract is valid only if its “object” is “lawful.” (§ 1550, 1596; *Hill v. San Jose Family Housing Partners, LLC* (2011) 198 Cal.App.4th 764, 774 (*Hill*) [“A contract must have a lawful object.”]; cf. § 1599 [contract with a “single,” “unlawful” “object” is “void”].) Courts generally refuse to enforce a contract with an unlawful object because enforcing such a contract would make

the “judicial system” complicit in enforcing an “illegal bargain.” (*Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1255-1256 (*Yoo*).)

A contract is not unenforceable simply because it is somehow “connected with an illegal transaction.” (*Robertson v. Hyde* (1943) 58 Cal.App.2d 667, 672 (*Robertson*).) It is not enough that “there may be some illegal[ity] . . . indirectly connected with a transaction.” (*Hill, supra*, 198 Cal.App.4th at p. 776.) A contract is unenforceable only if ““the central purpose of the contract is tainted with illegality.”” (*MKB Management, Inc. v. Melikian* (2010) 184 Cal.App.4th 796, 803 (*MKB*), quoting *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 996.) Illegality is central to the purpose of the contract if ““the plaintiff requires the aid of the illegal transaction to establish his case [for relief in court].”” (*Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1109 (*Homami*); *Brenner v. Haley* (1960) 185 Cal.App.2d 183, 187; see *Yoo, supra*, 147 Cal.App.4th at pp. 1252-1253 [illegality is central to contract to sell counterfeit goods].) And if a contract has “several distinct objects,” the courts will endeavor to enforce those portions of the contract having a lawful object if those portions may be feasibly severed and ““the interests of justice . . . would be furthered”” by severance.” (§ 1599, italics added; *MKB*, at p. 804; see also § 1643 [“A contract must receive such an interpretation as will make it lawful . . .”].)

In this case, the buyback provision of the Agreement that Lin is seeking to enforce is enforceable for two reasons.

First, the “central purpose” of the Agreement is not tainted with illegality. Even if we assume that Lin was seeking to defraud the federal immigration authorities by trying to use the Agreement to support his application when the “buyback” was

really a loan (and hence not a qualifying “investment”), that illegal purpose is not central to the Agreement. That is because Lin’s entitlement to repayment of his full \$1,000,000 contribution under the Agreement depends solely on proof that Lin paid Chiu \$1,000,000 and did not get all of it back. Put differently, Lin does not ““require[] the aid of the illegal transaction to establish his case.”” (*Homami, supra*, 211 Cal.App.3d at p. 1109.)

In this respect, this case is akin to *Robertson, supra*, 58 Cal.App.2d 667 and *C.I.T. Corp. v. Breckenridge* (1944) 63 Cal.App.2d 198, 200 (*Breckenridge*.) *Robertson* declined to excuse a homebuyer from his duty to repay a loan just because the seller-lender unlawfully put title to the house in her son’s name so she could qualify for “old age relief.” (*Robertson*, at pp. 670-671.) And *Breckenridge* declined to excuse a borrower from his duty to repay a loan just because the loan was used to fund construction by an unlicensed contractor. (*Breckenridge*, at p. 200.) Here, Chiu should not be excused from his duty to repay his loan from Lin just because Lin might have presented, in a misleading way, the nature of the Agreement to immigration authorities to obtain an immigration benefit. Neither Lin’s motives in making the loan nor Chiu’s knowledge of Lin’s motive adds any further weight to the scales. (*Powis v. Moore Machinery Co.*, (1945) 72 Cal.App.2d 344, 354 [party’s “motive d[oes] not make [a] contract illegal”]; *People v. Brophy* (1942) 49 Cal.App.2d 15, 30 [contract remains “enforceab[le] . . . even though one of the parties thereto has knowledge of an intended purpose of the other party, by means of the contract . . . to violate some law or public policy”].)

Chiu points us to *Casa Del Caffè Vergnano S.P.A. v. Italflavors, LLC* (9th Cir. 2016) 816 F.3d 1208 (*Casa*). But *Casa*



is inapt. In *Casa*, the court refused to enforce a contract when the parties had simultaneously entered into a second agreement declaring that the first contract did not have “any validity or effectiveness between the parties.” (*Id.* at p. 1210, 1212-1214; see also *Homami, supra*, 211 Cal.App.3d at p. 1112 [court refuses to enforce provision negated by an oral side agreement].) Here, Lin and Chiu signed only one contract; that contract was meant to be effective; and the parties treated it as effective by creating the LLC and exchanging \$1 million. Thus, the Agreement is in no sense a “sham.” (Cf. *Young v. Hampton* (1951) 36 Cal.2d 799, 805-806 [first contract not enforceable where second contract declared that first was designed to evade the requirements of the G.I. Bill and obtain its benefits].)

Second, the object of the Agreement in facilitating Lin’s contribution of money and Chiu’s buyback of the same is distinct from—and, critically, severable from—the object of the Agreement in facilitating Lin’s application for lawful permanent residency. Severance of a contract serves the interests of justice when it (1) would “prevent parties from gaining undeserved benefit or suffering undeserved detriment as a result of voiding the entire agreement,” or (2) would “not be condoning an illegal scheme’ [citations].” (*MKB, supra*, 184 Cal.App.4th at pp. 803-804.) If we declared the entire Agreement invalid due to illegality in Lin’s subsequent use of the Agreement for immigration purposes, Chiu would get to keep the remaining balance of the loan—\$702,000—free and clear. This is an undeserved benefit. Allowing Lin to enforce the monetary portion of the Agreement would also not condone an illegal scheme because any illegality goes at most to *why* Lin handed over \$1 million, but not the terms of the exchange itself or its

expected repayment. Chiu's argument that allowing Lin to enforce his loan will create "horrible precedent" by giving wealthy foreign investors a "road map" on "how to . . . circumvent[] well-established United States Immigration Law" is, in our view, little more than a speculative bugaboo that would itself create horrible precedent by giving debtors a road map on how to circumvent their admitted debts.

**B. Does Lin have unclean hands?**

"The defense of unclean hands arises from the maxim: "He who comes into Equity must come with clean hands."'" (*East West Bank v. Rio School Dist.* (2015) 235 Cal.App.4th 742, 751, quoting *Blain v. Doctor's Co.* (1990) 222 Cal.App.3d 1048, 1059 (*Blain*).) Whether the doctrine bars relief in any particular case "depends upon . . . [(1)] analogous case law, [(2)] the nature of the misconduct, and [(3)] the relationship of the misconduct to the claimed injuries." (*Blain*, at p. 1060.) With respect to the third element, "[t]he misconduct that brings the unclean hands doctrine into play must relate directly to the transaction concerning which the complaint is made" and "must infect the cause of action involved and affect the equitable relations between the litigants." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 984.) Because, as explained above, any illegality regarding Lin's use of the Agreement is peripheral to the contribution and buyback of the \$1 million at issue in this litigation, the two are not "directly" "relate[d]" and the unclean hands doctrine is not a bar.

**II. Cross-Appeal of Fraudulent Conveyance Ruling**

Lin contends that the trial court was wrong to reject his fraudulent conveyance claim. Before a transfer will be voided under the Uniform Voidable Transactions Act (Act), the *plaintiff*-

*creditor* must prove that (1) the defendant-debtor “made” a “transfer . . . without receiving a reasonably equivalent value in exchange for the transfer . . .,” and (2) “the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer . . .” (§ 3439.05, subds. (a) & (b) [burden of proof on plaintiff-creditor].) The trial court concluded that Lin did not prove that Chiu or Chiu’s wife were insolvent while or after they transferred their house to the trusts, and Lin does not challenge this conclusion *as a matter of evidence*. Instead, Lin argues that the trial court made a *legal* error in not assigning the burden of proof to Chiu and Chiu’s wife.

Lin is wrong. To be sure, the Act provides that “[a] debtor [who] is generally not paying [his] debts as they become due other than as a result of a bona fide dispute is presumed insolvent” and thereafter bears the “burden of proving the nonexistence of insolvency.” (§ 3439.02, subd. (b).) But this presumption only applies if the debtor is “not paying [his] debts as they become due.” The Legislative Committee Comment to this provision explains that a “court should look at more than the amount and due dates of the indebtedness” and should “also take into account such factors as [(1)] the number of the debtor’s debts, [(2)] the proportion of those debts not being paid, [(3)] the duration of the nonpayment, and [(4)] the existence of bona fide disputes or other special circumstances alleged to constitute an explanation for the stoppage of payments.” (Assem. Com. on Finance and Insurance, com. on Sen. Bill No. 2150 (1985-1986 Reg. Sess.) reprinted at 12A pt. 2 West’s Ann. Civil Code (2016 ed.) foll. § 3439.02, pp. 260-262.)

Substantial evidence supports the trial court’s implicit finding that Lin did not prove Chiu’s failure to pay his debts as

they became due (and hence its implicit finding that the statutory presumption was not triggered). The record contains evidence that, after the December 2009 due date, Chiu was unable to repay the loan to Lin, but Lin waived Chiu's duty to pay the \$80,000 in additional payments and extended the buyback date for the \$1 million contribution, and Chiu went on to make four different payments totaling \$298,000. Lin did not present evidence of the parties' ultimately agreed-upon due date, so we do not know whether Chiu was not paying his debt to Lin as it was coming due. What is more, even if we assume that Chiu was in arrears with respect to his payments to Lin, Chiu owns interests in several different franchises run by different LLCs and Lin did not establish that Chiu was not paying any debts of those LLCs or his own personal debts as they were coming due. To the contrary, Chiu indicated that some of the other LLCs remained profitable. A defendant-debtor's insolvency looks at *all* of his assets; the statutory proxy for such insolvency should accordingly look at whether the defendant-debtor is keeping up with *all* of his debts.

Because Lin is appealing the trial court's finding that he failed to prove a fact necessary to invoke the burden-flipping presumption, he is entitled to relief on appeal only if "the evidence compels a finding in [his] favor . . . as a matter of law." (*Almanor Lakeside Villas Owners Assoc. v. Carson* (2016) 246 Cal.App.4th 761, 769.) Given the ambiguity in the record as to whether Chiu was not paying his debts as they were coming due, the record does not compel the finding that Chiu was not doing so as a matter of law.

**DISPOSITION**

The judgment is affirmed. The parties are to bear their own costs on appeal and cross-appeal.

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\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
CHAVEZ